Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00161/2018

THE IMMIGRATION ACTS

Heard at Field House by video conference on 17 December 2020 (V)	**Decision & Reasons Promulgated On 27 January 2021**

Before

THE HON. MR JUSTICE FORDHAM
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

K T
(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. We find that it is appropriate to continue the order. We make clear that anonymity is not granted to protect the appellant's reputation following his convictions for criminal offences. Unless and until a tribunal or court directs otherwise, the original appellant (KT) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:
For the appellant: Mr T. Melvin, Senior Home Office Presenting Officer
For the respondent: Ms A. Childs, instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. For the sake of continuity we shall refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the Upper Tribunal.

2. The appellant (KT) entered the UK on 07 July 1996 with his mother and siblings when he was only a month old. His father was recognised as a refugee and the family was granted Indefinite Leave to Remain in line with his father on 11 October 1998.

3. On 28 May 2013, when he was 16 years old, he was convicted of possessing a knife in a public place, given a six month referral order, and was ordered to pay £40 in costs. On 24 April 2017, when he was 20 years old, he was convicted of a more serious offence of conspiracy to possess a Class A controlled drug with intent to supply and was sentenced to four years and six months imprisonment.

4. On 30 October 2017 the respondent (SSHD) notified the appellant that she was intending to 'exclude' him from the protection of the Refugee Convention under section 72 of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'). He was invited to rebut the presumption that the crime was particularly serious and that he constituted a danger to the community. The appellant sent written representations on 28 November 2017.

5. On 21 March 2018 the respondent notified the appellant of her intention to 'revoke' refugee status although this is not a case where refugee status was 'granted' under the Qualification Directive (2004/83/EC) and there is no principle of revocation under the Refugee Convention. A notification of intention to cease refugee status was sent to UNHCR on 12 April 2018. UNHCR responded in a letter dated 07 July 2018. UNHCR noted that the review of the appellant's refugee status appeared to be triggered by his criminal conviction but urged the respondent not to introduce substantive modifications to the cessation clauses by considering factors that were not relevant to cessation. Article 1C of the Refugee Convention establishes the reasons why the Convention may cease to apply to a person. Article 33(2) contained an exception to the fundamental principle of *non-refoulement* in certain defined circumstances. UNHCR outlined background evidence relating to the situation in Cabinda, which post-dated the country guidance decision in *MB (Cabinda risk) Angola* CG [2014] UKUT 00434. It concluded that the current country information indicated that people with actual or imputed political opinion in support of FLEC may face ill-treatment in Angola and that a more thorough assessment of the appellant's perceived links to FLEC might been required. UNHCR encouraged the respondent to

consider whether the appellant's family background might come to the attention of the Angolan authorities as a result of normal security checks of an involuntary returnee.

6. The respondent signed a deportation order on 07 October 2018 pursuant to section 32(5) of the UK Borders Act 2007 ('UKBA 2007'). In a decision dated 08 October 2018 the respondent certified that the appellant was presumed to have been convicted of a particularly serious crime and constituted a danger to the community for the purpose of section 72(2) NIAA 2002. It was asserted, inaccurately, that the consequence of section 72 is that "they do not qualify for a grant of asylum under Immigration Rule 334 on the basis that Article 33(2) of the Geneva Convention applies to him". The respondent concluded that the appellant would not be at real risk of serious harm if returned to Angola or in the alternative that he should be excluded from Humanitarian Protection because he constituted a danger to the community. The respondent made a decision to revoke refugee status albeit this was an inaccurate description of what was in fact a decision that refugee status had ceased. The respondent noted UNHCR's view that the country situation in Angola did not justify the application of Article 1C(5) of the Refugee Convention. In light of the findings made in *MB (Angola)* the respondent concluded that the appellant would not be at risk on return for reasons of his Cabindan ethnicity or for reasons of imputed political opinion. The respondent went on to consider whether removal would be unlawful under section 6 of the Human Rights Act 1998 but concluded that there were no 'very compelling circumstances' to outweigh the public interest in deportation.

7. First-tier Tribunal Judge Scott-Baker ('the judge') allowed the appeal in a decision promulgated on 26 August 2020. She set out the background to the case, including the appellant's immigration history, summarised the reasons given in the decision letter, and outlined the appellant's criminal history and the evidence relating to rehabilitation [2-39]. She summarised the evidence given by the witnesses at the hearing [40-64], the expert country report [65-70], the psychiatric report [71-76], the letter from UNHCR [77-79], and outlined some of the information from the background material, including the relevant country guidance case of *MB (Angola)* [80-83].

8. The judge moved on to make her findings with reference to the relevant legal framework. She began, as required by the statute, by considering the section 72 certificate. She evaluated the evidence in detail and gave sustainable reasons for concluding that the appellant had failed to rebut the presumption that he was a danger to the community [84-103]. There is no cross-appeal to challenge those findings.

9. At [104] the judge directed herself appropriately regarding the effect of the decision to uphold the certificate. She made clear that section 72 is said to reflect Article 33(2) of the Refugee Convention. Section 72(10)(b) states that if the Tribunal is in agreement that the presumption applies it must dismiss the appeal in so far as it is

brought on Refugee Convention and Humanitarian Protection grounds. The judge was correct to conclude that the appellant could only rely on Article 3.

10. Consistent with the decision in *Essa (Revocation of protection status appeals)* [2018] UKUT 244, the judge went on to make findings on the issue of cessation [105-121]. She referred to the relevant legal framework. At [106] she used the wording of Article 1C of the Refugee Convention and Article 11 of the Qualification Directive. The judge clearly understood that the burden of proof was on the respondent to show that there had been a significant and non-temporary change in circumstances such that the appellant could no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality [120].

11. It is worth outlining the judge's findings relating to cessation in detail because they form the central plank of this appeal. Given that the burden of proof was on the respondent the judge began by considering the reasons given in the decision letter [107-111]. She noted that the respondent relied on *MB (Angola)* and asserted that there had been a significant and non-temporary change in circumstances such that there was no longer a reasonable degree of likelihood that he would be at risk of persecution for reasons of imputed political opinion because there was no evidence to suggest that he was politically active and he would not be perceived as an active member of FLEC. The judge made the following findings:

> "112. Notwithstanding the date of the country guidance case of 2014 some six year (sic) plus, the respondent has failed to produce any further evidence to support the conclusion that the situation as described by the Upper Tribunal in 2014 still persists. Further, notwithstanding the observations by UNHCR to revisit the decision on the basis that the respondent had failed to give sufficient consideration to the fact that the appellant had entered as a dependant of his father who had been actively involved in FLEC, there had been no review of the decision.
>
> 113. Background material was submitted by the appellant. In the BTI report of 2018 it recorded that the past two years had been marked by a profound economic crisis which had affected all areas of social and political life in Angola, triggered by a sharp drop on oil prices in later 2014. There are almost no institutionalised social safety nets in Angola and no public health coverage.
>
> 114. The January 2015 CIG on treatment of persons from Cabinda province had been archived in November 2019 but it had said that failed asylum seekers on return would not face interrogation or ill treatment unless a person was returning using travel documents other than a national passport which will be the case for the appellant. Whilst it was accepted that a person could be interrogated there was no evidence of ill-treatment. Another report at 2.4 4 (sic) stated that a person in these circumstances would be detained for days.
>
> 115. The Human Rights Watch report of 2019 reported that pro independence Cabindan protesters had been arrested.
>
> 116. The US State report of August 2018 on human rights in Angola stated that prison conditions were harsh and life threatening due to overcrowding, lack of medical care, corruption and violence. The authorities held short term detainees with serving

long term sentences for violent crimes and malnourishment was widespread which was echoed in the Human Rights Watch report of 2018.

117. Whilst the Home Office has stated that it does not apportion any weight to an individual's conviction when considering whether cessation is appropriate – [7] of letter of 21 March 2018 – it is clear, as suggested by UNHCR, that this does remain a trigger for cessation noting in particular there had been no intent to revoke the refugee status of any of the appellant's family.

118. In any event on the evidence that is before me the respondent has clearly failed to consider the position of the appellant on return to Luanda as the son of a person who has been campaigning for FLEC. The country guidance case provides there are normal security procedures at the airport and that investigations would be made into the identity of the returnee. There is the possibility that the appellant will be identified by reference to his father how has been found to be a FLEC supporter. It is highly likely that the authorities will require the name of his parents. As the appellant is returning from London suspicion may well arise at it is unlikely that he would be returning on a national passport and more likely on travel documents. He has never been to Angola and he claims that he does not speak Portuguese. He would have no address to give to any immigration officer and would have no obvious means of support. In these circumstances it is likely that there would be further investigation of him and when the authorities discovered that he had been deported for drug offences, if the question is asked he cannot be expected to lie, it is likely that the interrogation would be more thorough.

119. In these circumstances detention is likely and the background material shows that prison conditions are severe. That risk as not been fully considered by the respondent but it is an important component in the overall risk to the appellant on return. It remains however that the risk emanating from his father has not been fully quantified.

120. In all the circumstances there has to be a doubt as to whether the respondent has discharged the burden of proof in showing that there are significant and enduring changes to warrant a revocation of refugee protection.

121. However in the light of the finding as to the section 72 certificate the appellant cannot have any benefit under the Refugee Convention."

12. The judge went on to make findings relating to risk on return with reference to Article 3 of the European Convention on Human Rights. She reminded herself that it is an absolute right and made clear that the burden of proof was on the appellant to show that removal would breach Article 3 [122]. She considered the appellant's personal circumstances in addition to some of the background evidence she had already considered when assessing the background situation in Angola. For similar reasons, she concluded that the appellant would be at risk of more intense questioning on return to Angola whereby his father's background as an active FLEC member was likely to come to light. She took into account the background evidence which showed that pro-independence Cabindans were still arrested and concluded that "the issue remains live". For these reasons she found that there was a real risk of detention and that the background evidence showed that the conditions in detention would breach Article 3 [126-128].

13. The judge then turned to consider Article 8 with reference to the relevant legal framework under section 117C(3) NIAA 2002. She conducted a structured analysis consistent with the guidance suggested by the Court of Appeal in *NA (Pakistan) v SSHD* [2016] WLR(D) 371 whereby she considered to what extent the appellant might meet any of the exceptions to deportation as part of her overall consideration of whether there were 'very compelling circumstances' which outweighed the public interest in deportation. She made the following findings relating to Exception 1 (private life):

> "138. I find that the appellant has been lawfully resident in the UK for all of is life, with the exception of the first 4 weeks. On the issue of social and cultural integration I note his offending history, noting that he has been convicted twice. I note that he is suspected of being involved in a gang. He has been educated in the UK and knows of no other country. Social and cultural integration in urban Britain in the 21st century has by its nature very different components to those from the last century. There was little evidence before me and in any event no evidence that he was not socially and culturally integrated. A criminal history by itself is not sufficient to find that the appellant is not so integrated.
>
> 139. I find however that the fact that removal would breach Article 3 means that there are very significant obstacles to his integration in Angola. He is and would be viewed as an outsider. He would have a fear that the authorities may discover that he is the son of a former FLEC supporter and would be fearful of the treatment which may follow. He has no skills and the only work available would be likely to be in the informal sector. His knowledge of Portuguese is limited and his anxiety condition would deteriorate. He is unlikely to be able to assimilate to life there and is unlikely to be able to support himself. The appellant is at risk of becoming destitute.
>
> …..
>
> 141. In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2. I remind myself that the circumstances must be over and above the findings in respect of Exception 1 and 2. These replicate the issues with regard to Article 8 and I factor in the findings about with reference to Article 3. I find given all of the evidence that there are very compelling circumstances over and above Exceptions 1 and 2 for the reasons set out herein."

14. The Secretary of State's original grounds were poorly particularised but have been formulated into the following three points in the subsequent skeleton argument.

(i) The judge failed to follow relevant country guidance and erred in concluding that there was likely to be a continued risk on return.

(ii) The judge erred in finding that the appellant had no cultural links to Angola when his parents are Angolan and he is likely to have had 'exposure to his culture and heritage'.

(iii) The judge erred in concluding that there were 'very compelling circumstances' that outweighed the public interest in deportation. It was open to the Secretary of State to find that his offending history indicated that he was not socially and culturally integrated in the UK. In the skeleton argument, but not

pleaded in the original grounds, the Secretary of State places reliance on the decision in *Binbuga v SSHD* [2019] EWCA Civ 551.

15. A face to face hearing was not held because it was not practicable due to public health measures put in place to control the spread of Covid-19. The appeal was heard by way of a remote hearing by Skype for Business with the parties' consent. The parties confirmed that they were content that there was no prejudice in proceeding in this way. All issues could be determined in a remote hearing. The submissions made by the parties are a matter of record.

Decision and reasons

16. In view of the fact that the judge's findings relating to Exception 1 under section 117C(4) and section 117C(6) NIAA 2002 relied heavily on her earlier findings relating to risk on return under Article 3, it seems clear to us that the second and third grounds rely on the success of the first. This was the focus of Mr Melvin's submissions.

17. The Secretary of State's case relies primarily on a correct interpretation of the country guidance in *MB (Angola)*.

18. The decision letter cited the country guidance as the sole reason for concluding that the circumstances surrounding recognition as a refugee no longer existed and/or that there was no Article 3 risk. At [52] of the decision the Secretary of State concluded that in the absence of "high profile opposition activity to the Angolan regime" it was unlikely that the appellant would be perceived as "an active member of the upper echelons of any political organization working to destabilise the unitary Angolan state."

19. The grounds of appeal simply quote the headnote from the country guidance then assert that the judge failed to give adequate reasons for following the guidance. The grounds go on to assert that "the caselaw appears clear" that only personal involvement in FLEC would raise suspicion. Even if the authorities became aware of his father's involvement in FLEC, there was no indication that he continued to be involved in FLEC or that he was ever "high profile or of a senior position". In light of the Upper Tribunal's finding that FLEC now appeared to be a spent force, and Cabindan ethnicity alone is insufficient to attract risk, it was not open to the judge to find that the appellant would be at risk by association with his father.

20. The Secretary of State's skeleton argument asserted that the body of up to date evidence before the judge was not sufficient to depart from the country guidance. It was argued that there was nothing in *MB (Angola)* to support the finding that the appellant would be at risk on the basis of his father's "significantly stale" activities. There was scant evidence to suggest that he might be at risk because of his criminal convictions. At the hearing, Mr Melvin argued that the appellant did not fit within any of the risk categories identified by the Upper Tribunal in *MB (Angola)*. The

country guidance only identified a risk to those who are politically active. He acknowledged that the more recent evidence contained in the Human Rights Watch report talked about demonstrators being attacked and ill-treated, but submitted that there was no evidence to suggest that the appellant would be politically active.

21. The headnote of *MB (Angola)* outlined the following country guidance.

> "1. FP (Return – Cabinda – Non-Luandan) Angola CG [2003] UKIAT 00204 no longer provides an accurate assessment of country conditions. It ceases to be country guidance.
>
> 2. There is significant evidence of human rights abuses, including within Cabinda and affecting Cabindans, problems of arbitrary arrest and detention, ill-treatment in detention, poor prison conditions, restrictions on freedom of expression, government action against protest and limitations in the legal system and security laws. However, these problems do not render all those returning to Angola or Cabinda to be at risk of serious harm, whether or not they are Cabindans.
>
> 3. Unless there exists a situation in which there is generalised violence or armed conflict at a very high level (which is not the case here) in order to establish a real risk of harm, an individual has to establish that, by reason of circumstances as they relate to him, there is a reasonable likelihood he will come into contact with the authorities in a way that will result in his detention.
>
> 4. The Angolan authorities do not equate being a Cabindan with being a member of or supporter of the Front for the Liberation of the Enclave of Cabinda (FLEC).
>
> 5. The evidence fails to establish that FLEC currently operates at a level such as to represent a real threat to the Angolan authorities although they are keen to take measures to ensure that there is no resurgence of its activities. Nor does the evidence establish that FLEC reflects the views and aspirations of a majority of Cabindans, notwithstanding the fact that the Cabindan sense of social identity remains very strong and separation from Angola remains an aspiration shared by many. The Angolan authorities readily understand the distinction between FLEC membership or support and Cabindan self-assertion.
>
> 6. There is clear evidence of normal security checks at airports, including Luanda airport on arrival. Those checks are likely to be thorough and directed towards establishing the identity of the person entering the country.
>
> 7. There are no obstacles in a returnee to Luanda airport making an onward journey to Cabinda. The finding in FP that travel to Cabinda from Luanda is excluded as a practical possibility is no longer correct.
>
> 8. Language is a distinctive method of identification but identification as a Cabindan is not sufficient to establish a real risk.
>
> 9. A person of Cabindan origin returning to Angola will not in general be at real risk of ill-treatment by reason of his or her Cabindan origin. Such a person is reasonably likely to be detained (with the accompanying risk of ill-treatment) only if he or she has a history of active involvement with FLEC (or one of its factions, such as FLEC-PM or FLEC-FAC). Excluded from those at risk are individuals formerly associated with the pro-government FLEC-Renewal (FLEC-Renovada) or Antonio Bembe.

> 10. A person's Cabindan origin will not, in general, preclude him from living or working in Luanda or some other part of Angola."

22. The Secretary of State submits that *MB (Angola)* found that there was only a risk to active FLEC members, and according to the decision letter, this was elevated to "high profile" activity.
23. Having considered the decision in *MB (Angola)* in detail we conclude that the country guidance does not have the meaning the Secretary of State appears to contend. We make the following observations.

24. First, the account of the appellant in *MB (Angola)* was not found credible. The focus of the country guidance was to consider whether return to Angola as a Cabindan failed asylum seeker would give rise to risk on grounds of attributed political opinion as well as considering the risk to FLEC members and supporters.

25. Second, the country guidance did not state that there was such an improvement in the situation that there was no risk to those associated with FLEC. On the contrary, the Upper Tribunal made clear that there was significant evidence of human rights abuses in Angola, including within Cabinda. However, the Upper Tribunal found that those problems were insufficient to show that a person returning to Angola would be at risk solely because of the general country situation. The Upper Tribunal made clear that the evidence fell far short of showing that all Cabindans were at risk, but emphasised that each case must be considered on the facts. In order to establish a real risk "an individual has to establish that, by reason of circumstances as they relate to him, there is a reasonable likelihood he will come into contact with the authorities in a way that will result in his detention. This is sometimes referred to as arising by reason of 'his profile'" [109-110].

26. Third, nothing in the ninth point in the headnote supports the Secretary of State's assertion that only high profile or senior members of FLEC would be at risk. The guidance states that those with a history of active involvement with FLEC were at risk but did not specify the level of activity. The Tribunal distinguished those who were "members and supporters" or "associated with FLEC" (which could include family members) and "Cabindan self-assertion" [112].

27. Fourth, nothing in the country guidance departs from the trite principle of refugee law that a risk might arise because of attributed political opinion. What matters is the perception of the persecutor. The Upper Tribunal made repeated reference to evidence, which included potential risk arising from suspected activity for FLEC and touched on the issue in its findings [53][73][88][127][138].

28. Fifth, although the Upper Tribunal concluded that there was insufficient evidence to show that Cabindans returning to Angola would be suspected of FLEC activities, it found that the evidence showed that there would be tight security checks at the airport [87]. It quoted the country guidance decision in *FP (Return – Cabinda – Non-Luandan) Angola* CG [2003] UKIAT 00204 in which the previous Tribunal found that a person would be questioned with a view to establishing their identity and "whether

they were of interest to the authorities for political or criminal reasons" [86]. The Tribunal in *MB (Angola)* considered the evidence relating to risk at the airport and noted that UNHCR reported no cases of ill-treatment, but another source reported some cases of failed asylum seekers being ill-treated by state intelligence officers [88]. At [115] the Tribunal concluded that checks would not lead to arrest and detention "unless there is a specific reason for attention."

29. Sixth, we note that what is said at [113] of *MB (Angola)* muddies the waters slightly in that it appears to question a previous finding in *FP (Angola)* and draws back from the suggestion that the Angolan authorities may know of individuals, or their family members, who are FLEC members. However, we note that this finding is not explained in detail and was not included in the main country guidance.

30. Having conducted this analysis we conclude that there is nothing in the First-tier Tribunal's findings that depart from the country guidance. The judge was obliged to conduct an assessment of the appellant's individual profile. It is accepted that the appellant's father was an active member of FLEC who was detained and subjected to past persecution. We note that his father said that he is still a member of FLEC although his statement does not outline what level of activity this might involve. The judge's finding that the appellant would be subject to tight security checks on return to the airport was consistent with the country guidance. The country guidance made clear that some cases might give rise to specific reason for attention. The judge gave sustainable reasons to explain why the appellant's profile might attract more detailed questioning. The fact that he did not speak Portuguese, was Cabindan, had never lived in Angola, had no current links with Angola, and was likely to be identified as a person who was being forcibly returned on a travel document, were all factors that the judge was entitled to take into account.

31. Even taking into account the comments at [113] of *MB (Angola)* it was open to the judge to conclude that it was at least likely that the authorities may have a record of his father's detention as a FLEC activist. There is likely to be a distinction between the authorities keeping general records of suspected FLEC members and supporters and records of formal detentions. The Tribunal in *MB (Angola)* found no evidence of the former but it can reasonably be inferred that the authorities are likely to keep records of the latter. Although it did not form a significant part of her reasoning, it was also open to the judge to take into account the appellant's criminal profile given that it was a factor quoted at [86] of *MB (Angola)* and also formed part of the evidence given by the country expert, which the judge summarised at [66].

32. As we have already observed, the country guidance did not focus on family members of FLEC members and supporters. However, it is trite that family members might, by association, also be suspected of political activity. It was open to the judge to consider the opinion of the country expert, who considered that people who were actively involved in FLEC were at risk and that the threat was "enlarged to family members". The judge took into account the fact that the country guidance was six years old and was obliged to look at the most up to date evidence at the date of the

hearing. Far from seeking to depart from the country guidance she took it into account and considered whether there was any evidence to show that there was no longer any risk to real or perceived FLEC activists. Given the current evidence continues to show that active FLEC members and supporters are still likely to attract the adverse attention of the Angolan authorities, it was open to the judge to conclude that, even if the appellant was not politically active himself, he might be perceived to be an active FLEC member by association with his father when faced with detailed questioning at an airport 'pinch point' and that this was likely to give rise to a real risk of detention and ill-treatment.

33. It is understandable that the Secretary of State disagrees with the decision but we conclude that the judge's findings were consistent with the country guidance and were within a range of reasonable responses to the up to date evidence at the date of the hearing. The judge's findings that (i) the respondent had failed to show that there has been a significant and non-temporary change in circumstances such that the circumstances in connection with which he was recognised as a refugee have ceased to exist; and (ii) that the appellant had shown that there were substantial grounds for believing that he would be at real risk of Article 3 ill-treatment on return did not involve the making of errors of law. It follows that her findings relating to Article 8 are also sustainable given that they relied primarily on those relating to risk on return.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The decision shall stand

Signed M. Canavan Date 13 January 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email